IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

RSA.No. 461 of 2007()

AS.353/2006 of DISTRICT COURT, ERNAKULAM
OS.552/1993 of MUNSIFF COURT, PERUMBAVOOR
.....

APPELLANTS/ APPELLANTS IN AS/DEFENDANTS IN SUIT:
---

1. KURIAKOSE, S/O.CHERIA, PAROOKKARAN
VEETTIL, IRAPURAM VILLAGE, PERUMBAVOOR.

2. SAROJINI, D/O.VELAYUDHAN,
KIZHAKKEVARIAKATTIL, MAZHUVANNOOR KARA,
MAZHUVANNOOR VILLAGE, PERUMBAVORR.

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SMT.GEETHA P.MENON

RESPONDENTS/ RESPONDENTS IN AS/PLAINTIFFS IN SUIT:
---

1. THANKAPPAN, S/O.KUMARAN,
VARIKKATTIL HOUSE, IRAPURAM KARA, IRAPURAM VILLAGE
PERUMBAVOOR.

2. RAGHAVAN, S/O. -DO- IN -DO- -DO-.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.973/07 IN RSA 461/07

DISMISSED

13/7/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PS to Judge.

M.SASIDHARAN NAMBIAR,J.

==========

R.S.A NO.461 OF 2007

==========

Dated this the 13th day of July. 2007

JUDGMENT

Defendants in O.S.552/1993 on the file of Munsiff Court, Perumbavoor are the appellants. Plaintiffs are the respondents. Respondents instituted the suit seeking a decree for declaration of title to plaint A schedule property and recovery of possession of plaint B schedule property contending that it was trespassed by respondents and permanent prohibitory injunction in respect of the remaining portion of the plaint A schedule property. Respondents contended that plaint schedule properties originally belonged to Krishnankutty and while so, he has been in possession and enjoyment of the property, respondents purchased the property from Krishnankutty under Ext.A1 sale deed dated 29.12.1992 and Ext.A2 sale deed dated 10.2.1999 and since then they have been in absolute possession

and enjoyment of the plaint A schedule property and appellants have no manner of right or possession over the same. Contending that after the institution of the suit, on 5.5.2000, appellants trespassed into plaint B schedule property, respondents sought a decree for recovery of possession of plaint B schedule property on the strength of their title. Appellants in the written statement denied the right and title of respondents and contended that the eastern boundary of the property of the respondents is not the canal and the boundary description of plaint schedule A property is not correct and respodents purchased 26 ½ cents of the property and there is no canal on the eastern side of that property and there existed a mud-ridge separating the property wherein rubber trees are planted by appellants and 26 ½ cents of property purchased by respondents is on the western side and respondents are not entitled to the decree sought for. After the plaint was amended

additional written statement was filed contending that the actual extent of the plaint schedule properties described as 12.63 ares is incorrect and respondents have not even one cent of the property more than 10.72 ares as stated in Ext.A1 document and Ext.A2 sale deed was concocted later and respondents have no right or title to the property and respondents are not entitled to the decree for recovery of possession sought for.

2. Learned Munsiff on the evidence of P.Ws. 1 to 3 and Dws.1 to 3 and Exts.A1 to A3 and B1 and B2 and C1 to C3 upheld the title of respondents over plaint A and B schedule properties and found that on the strength of title, respondents are entitled to recover possession of plaint B schedule property and as respondents are in possession of the remaining portion of plaint A schedule property they are entitled to a decree for injunction. The suit was decreed. Appellants challenged the decree and judgment before District

Court, Ernakulam in A.S.353/2006. Learned District Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned senior counsel appearing for appellants was heard.

4. The argument of learned senior counsel was that the courts below did not appreciate the evidence with regard to the identification of the property in the proper perspective. Learned senior counsel fairly did not challenge the finding of the courts below with regard to the title of the respondents or recovery of possession of plaint B schedule property, in the light of evidence of DW1 as he admitted the title of the respondents. Learned senior counsel argued that the property which lies to thr east of the plaint B schedule property is in the possession of the appellants and courts below should not have granted a decree for injunction. It was argued that respondents have

amended the plaint seeking a decree for recovery of possession of only plaint B schedule property and the property which lies to the east of the canal is in the possession of appellants and therefore the decree for injunction granted is unsustainable.

5. On hearing the learned senior counsel and going through the judgment of the courts below, I do not find any substantial question of law involved in the appeal. The question whether respondents are in possession of the disputed property or the appellants are in possession of the disputed property is a finding of fact. Learned Munsiff on appreciation of evidence found that the entire plaint A schedule property, excluding plaint B schedule property for which a decree for recovery of possession as granted, is in the possession of the respondents. The first appellate court on reappreciation of evidence confirmed that finding and held that respondents are in possession of the said property. In the light of that

factual finding, appellants cannot be heard to contend that they are in possession of the disputed property. Though learned counsel argued that the finding of fact rendered by the courts below are erroneous, exercising the powers under section 100 of the Code of Civil Procedure, the factual finding rendered by the courts below cannot be interfered by reappreciating the evidence and substituting the finding of this court to the findings of the courts below. Finding of facts by the first appellate court is final. In such circumstance, no substantial question of law is involved in the appeal. The appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006